Supreme Court, U.S.
FILED
JAN 7 2000
CLERK

No. 99-988

IN THE

Supreme Court of the United States

ABOLALA SOUDAVAR, *et al.*,

Petitioners,

v.

ISLAMIC REPUBLIC OF IRAN, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

BRUNO A. RISTAU
Counsel for the Respondents
LAW OFFICES OF
BRUNO A. RISTAU, P.L.L.C.
1701 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20006
(202) 879-2655

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 1

A. Nature of the Suit 1

B. Petitioners' Jurisdictional Allegations 2

C. Proceedings in the Courts Below 3

REASONS FOR DENYING THE WRIT 4

CONCLUSION 6

TABLE OF AUTHORITIES

Page(s)

CASES:

Berkovitz v. Islamic Republic of Iran, 735 F.2d 329 (9th Cir. 1984) 5

Foremost-McKesson v. Islamic Republic of Iran, 905 F.2d 438 (D.C. Cir. 1990) 5

Republic of Argentina v. Weltover, Inc., 504 U.S. 607 (1992) 4

United States v. Johnston, 268 U.S. 220 (1925) 6

STATUTE AND TREATY:

Foreign Sovereign Immunities Act:

28 U.S.C. §1605(a)(2) 2, 4, 5

Treaty of Amity, Economic Relations, and Consular Rights between The United States of America and Iran, June 6, 1957, 8 U.S.T. 899, T.I.A.S. No. 3853 ..... 3, 5

RULES:

Federal Rules of Civil Procedure:

Rule 12(b)(1) 3
Rule 12(b)(6) 3
S. Ct. Rules, Rule 10 6

IN THE

Supreme Court of the United States

No. 99-988

ABOLALA SOUDAVAR, *et al.*,

Petitioners,

v.

ISLAMIC REPUBLIC OF IRAN, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

A. Nature of the Suit

Petitioners ("Soudavars") brought suit under the Foreign Sovereign Immunities Act ("FSIA") against the Islamic Republic of Iran and two of its agencies (collectively "Iran") for compensation for the nationalization of their properties in Iran in 1979. (Pet. App. 3A-5A).

In 1979 the Soudavars were nationals of Iran and shareholders in the Khawar Industrial Group ("KIG") which was nationalized following the Islamic revolution.[1] Although the nationalization decree contained some provisions for

[1] The Soudavars became U.S. residents in 1983 and Saadi Soudavar became a citizen in 1989.

compensation of the shareholders, the Soudavars have received no compensation. At a meeting in New York City in 1991, Abolala Soudavar discussed the nationalization of KIG with the Iranian Minister of Economy and was told to return to Iran if the Soudavars wanted the property back.

A year later, the Iranian Council of Ministers adopted a resolution to compensate eligible shareholders in nationalized enterprises. Under the resolution, the shareholders could elect to accept ⅔ of the numbers of shares previously owned. The Soudavars' declined to accept this offer. The instant suit was instituted in 1998.

B. Petitioners' Jurisdictional Allegations

The Soudavars sought to vest jurisdiction in the district court under the FSIA's "direct effect" clause of the commercial activity exception to sovereign immunity, 28 U.S.C. §1605(a)(2).[2] They urged that Iran's nationalization of KIG in 1979 and its subsequent failure to compensate the Soudavars under Iranian law had a direct effect on them in the United States and also resulted in a loss of tax revenues by the U.S. government and thus confers subject-matter jurisdiction on the district court.

---

[2] §1605 (a)(2) provides as follows:

A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . .

> (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; *or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States*. [Emphasis added]

In the alternative, the Soudavars sought to vest jurisdiction under the 1957 Treat of Amity with Iran.[3] They contended that the Treaty constituted a waiver of Iran's sovereign immunity from suit and conferred subject-matter jurisdiction upon the district court for Iran's failure to compensate the Soudavars for the nationalization of their property.

C. Proceedings in the Courts Below

Iran moved to dismiss the suit in the district court under Rule 12(b)(1), Fed. R. Civ. P., for lack of subject-matter jurisdiction and, alternatively, under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Without addressing Iran's challenge to its competence, the district court granted Iran's 12(b)(6) motion and dismissed the case without prejudice. (Pet. App. B1-8). The district court rejected the Soudavars' reliance on the Treaty of Amity. (*Id.* at 6-8). On appeal the Fifth Circuit vacated the district court's dismissal and ordered the suit dismissed for lack of subject-matter jurisdiction under the FSIA (Pet. App. A1-5).

The court of appeals rejected the Soudavars' "direct effect" argument ruling that at the time of the expropriation, the Soudavars lived in Iran, the property was located in Iran and, consequently, the loss occurred in Iran. The Soudavars later relocation to the United States did not alter the above result. (*Id.* at 4).

The court of appeals also rejected the Soudavars' reliance on that Treaty of Amity, holding that the treaty "extends only to enterprises of Iran, not Iran itself". (*Id.* at 5).

---

[3] Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, June 6, 1957; 8 U.S.T. 899, T.I.A.S. No. 3853.

REASONS FOR DENYING THE WRIT

The court of appeals' decision was correct that the "direct effect" clause of the commercial activity exception did not confer subject-matter jurisdiction over the Soudavars' nationalization claim.

Republic of Argentina v. Weltover, Inc., 504 U.S. 607, 611 (1992), firmly establishes the analytical framework for the third clause of §1605(a)(2). The Court there held that "[the] analysis is . . . limited to considering whether the lawsuit is (1) based . . . upon an act outside the territory of the United States; (2) [the act] was taken in connection with a commercial activity [of the foreign state] outside this country; and (3) [the act] cause[d] a direct effect in the United States" (internal quotations omitted). The court of appeals properly held that the effect of the nationalization of KIG was felt in Iran, not in the United States; that the nationalization was a quintessentially governmental act; and that, in any event, the "direct effect" clause of §1605(a)(2) provided no jurisdictional predicate for the Soudavars' suit because the acts complained of lacked the requisite jurisdictional nexus with the United States. (Pet. App. A3). The Soudavars seek to avoid this dispositive holding by contending that the gravamen of their claim is not Iran's nationalization of their shares, but its later implementation – or lack of implementation – of the nationalization decree. They urge that Iran's refusal to pay compensation for their nationalized shares is commercial in nature. (Pet. App. 8). The contention does not bear scrutiny.

The court of appeals was right when it held that nationalization was the sole basis of the Soudavars' claim.

(Pet. App. A4).[4] Iran's failure to pay the Soudavars compensation under its own laws was not a commercial, but a governmental, activity, and thus beyond the purview of § 1605(a)(2)'s "direct effect" clause.

The Soudavars' claim also fails to meet the second requirement of the "direct effect" clause. They assert that the ⅔ swap offered by Iran for the value of their property caused a direct effect in the United States in the form of tax losses to the Internal Revenue Services in 1994. (Pet. 9). This contention borders on the frivolous. To be cognizable under §1605(a)(2), the "direct effect" must be felt by the party bringing the suit, not by a third party that had no connection with the taking in Iran.

The Soudavars finally contend that subject-matter jurisdiction did also lie under the limited waiver of immunity found in the Treaty of Amity. The court of appeals correctly held, based on settled precedent, that the Treaty "extends only to enterprises of Iran, not Iran itself." *See, Berkovitz v. Islamic Republic of Iran*, 735 F.2d 329, 333 (9th Cir. 1984); *Foremost-Mckesson v. Islamic Republic of Iran*, 905 F.2d 438, 452 (D.C. Cir. 1990). Furthermore, at the time of the claimed nationalization of the property the Soudavars were citizens and residents of Iran. By it plain terms, the Treaty of Amity applies only to citizens of the "other High Contracting Party." Art. II, Sec. 2. The Treaty was designed to afford to nationals of Iran and the United States the same rights, in certain respects, as those accorded to their own nationals. The Treaty was not intended to allow Iranian nationals to invoke the benefit of the

---

[4] The Soudavars conceded in their brief in the court of appeals that the sole issue on appeal was "the jurisdiction of U.S. courts in a case where properties of Iran [*sic*] nationals, but legal U.S. residents, had been taken without compensation. [Pet. App. C2].

Treaty against their own government in the courts of the United States.[5]

CONCLUSION

The court of appeals' analysis and application of the Foreign Sovereign Immunities Act were correct as a matter of law. The petition presents no occasion for further review by this Court and should, therefore, be denied.

Dated: January 7, 2000

Respectfully submitted,

BRUNO A. RISTAU
Counsel for the Respondents
Islamic Republic of Iran;
Ministry of Industry and Mines of Iran; and
Sazmane Gostaresh Va Nowsazi-e Iran

---

[5] The Soudavars assert for the first time in this Court that the third defendant named in the complaint, "Sazmane Gostaresh Va Nowsazi-e Iran", is an enterprise of Iran rather than a department of the Iranian government. (Pet. 12). This argument is devoid of substance as the Soudavars assert no claims based on any actions taken by this organization. More dispositively, this Court will not grant certiorari to review evidentiary matters. Rule 10, S. Ct. Rules; *United States v. Johnston*, 268 U.S. 220, 227 (1925).